

Federal Emergency Management Agency

§ 328.2

industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made available for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contractors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Public Law 93-155, and statutory authority for leasing,

Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

§ 327.4 Disputes.

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Director, Federal Emergency Management Agency, shall adjudicate.

§ 327.5 Reports.

Such reports of operations under this order as may be required by the Federal Emergency Management Agency, shall be submitted to the Director.

PART 328—GENERAL POLICIES FOR STRATEGIC AND CRITICAL MATERIALS STOCKPILING (DMO-11)

Sec.

328.1 Purpose.

328.2 Policies.

328.3 Delegation of authority—Preparation of reports.

AUTHORITY: Strategic and Critical Materials Stock Piling Act, as amended, 50 U.S.C. 98; National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 12155 of Sept. 10, 1979, 44 FR 53071.

SOURCE: 45 FR 44584, July 1, 1980, unless otherwise noted.

§ 328.1 Purpose.

This part sets forth revised policies for the administration of strategic and critical materials stockpiling.

§ 328.2 Policies.

By virtue of the authority vested in me by Executive Order 11051, the following policies are promulgated to govern the administration of strategic and critical materials stockpiling:

(a) *General.* The strategic stockpile shall be so administered as to assure

the availability of strategic and critical materials in times of national emergency.

(b) *Period covered by stockpiling.* All strategic stockpile goals for conventional war shall be limited to meeting estimated shortages of materials for the first three years of a war.

(c) *Stockpile objectives.* Strategic stockpile goals shall be adequate for supplies of these materials in time of national emergency.

(d) *Emergency requirements.* The requirements estimates for use in times of national emergency, where appropriate, reflect specific requirements to the extent available. It shall be assumed that the total requirements will approximate the capacity of industry to consume, taking into account necessary wartime limitation, conservation and substitution measures. Departments and agencies having responsibilities with regard to requirements data on stockpile materials shall review such data and provide, upon his request, the Director of the Federal Emergency Management Agency with information as to all significant changes.

(e) *Emergency supplies.* Estimates of supply for the mobilization period shall be based on readily available capacity and known resources in the United States and such other countries as directed by the National Security Council. Departments and agencies having the responsibilities with regard to supply data on stockpile materials shall review such data and provide the Director of the Federal Emergency Management Agency upon his request, with information as to all significant changes.

(f) *Provision for special-property materials.* Arrangements shall be made for the regular availability of objective scientific advice to assist in the evaluation of prospective needs for high-temperature and other special-property materials. Such materials shall be stockpiled if reasonably firm minimum requirements indicate the existence of a supply deficit in the event of an emergency.

(g) *Supply-requirements reviews.* The supply-requirements balance for any material that is now or may become important to defense shall be kept under continuing surveillance. Supply-

requirements data submitted pursuant to paragraphs (d) and (e) of this section shall be examined upon receipt. A full-scale review may be undertaken at any time that a change is believed to be taken place that would have a significant bearing on the wartime readiness position. Priority of review shall be given to materials under procurement.

(h) *Procurement policy.* Unfilled objectives shall be attained expeditiously by cash procurement or otherwise as the Director shall deem appropriate. Long-term contracts shall contain termination clauses whenever possible. All feasible measures for meeting materials deficits in an emergency shall be considered. Stockpiling shall be undertaken only when it is clear that it is the best solution.

(i) *Maintenance of the mobilization base.* A portion of the mobilization base comprises existing or projected productive capacity the output of which will be relied on to fill defense requirements. All inventories of Government-owned materials held for long-term storage are a part of the mobilization base and should be weighed in determining the need for a relevant portion of the productive segment of the mobilization base. The maintenance of any portion of the productive segment of the mobilization base through stockpile procurement shall be undertaken only within unfilled stockpile objectives.

(j) *Upgrading to ready usability.* In order to satisfy the initial surge of abnormal demands following intensive mobilization in a period of national emergency, stockpile objectives of upgraded forms of such materials shall be established for immediate use in such circumstances. For this purpose a minimum readiness inventory shall be provided near centers of consumption. Materials in Government inventories may be upgraded for such stockpiling purposes only when the net cost of such processing including transportation and handling is less than the cost of new material. Materials should be upgraded to forms which will permit the greatest use-flexibility. Surplus materials may be used to pay for the upgrading of the same or other materials required to meet objectives providing that the use of excess materials for

this purpose is in conformance with disposal criteria.

(k) *Beneficiation of subspecification materials.* Subspecification-grade materials in Government inventories may be beneficiated within the limits of the objectives when this can be accomplished at less cost than buying new material.

(l) *Cancellation of commitments.* Commitments for deliveries to national stockpile and Defense Production Act inventories beyond the objectives shall be canceled or reduced when settlements can be arranged which would be mutually satisfactory to the supplier and the Government and which would not be disruptive to the economy or to projects essential to the national security. Such settlements may take into account anticipated profits and cover adjustments for above-market premiums. The settlement of commitments may be made through the payment of cash or through the use of surplus materials. Responsibility with respect to the settlement of commitments in the light of overall interest of the Government rests with the Administrator of General Services who shall keep other agencies advised and consult with them to the extent appropriate.

(m) *Retention of other inventories.* Within the limits of unfilled stockpile objectives, stockpile-grade materials in the Defense Production Act and the supplemental stockpile inventories shall be retained for national stockpile purposes.

(n) *Disposals:* (1) The Director of the Federal Emergency Management Agency will authorize the disposal of excess materials only after due regard to: (i) Avoidance of serious disruption of the usual markets of producers, processors and consumers, and (ii) the protection of the United States against avoidable loss.

(2) In general, excess materials constitute unneeded assets and shall be disposed of as expeditiously as possible.

(3) In making such disposals preference shall be given to materials that deteriorate, that are likely to become obsolete, that do not meet quality standards, or that do not have stockpile objectives.

(4) The Administrator of General Services shall be responsible for disposal of excess materials. He shall advise the Secretary of State and the appropriate Assistant to the President in advance on all disposal plans.

(o) *Government use.* Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof. Direct use means use in a Government-owned and operated facility and use in a Government-owned facility which is operated by a contractor for the Government. Indirect Government use means use by prime contractors and all tiers of subcontractors in the production of items being procured by the Government.

§ 328.3 Delegation of authority—Preparation of reports.

The Administrator of General Services shall prepare on behalf of the Director of the Federal Emergency Management Agency and forward to him for transmittal to the Congress reports as required by the Director.

PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO-12)

Sec.

329.1 Purpose.

329.2 Policies.

329.3 Procedures.

329.4 Implementation.

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 10480 of Aug. 14, 1953, (18 FR 4939) as amended.

SOURCE: 45 FR 44585, July 1, 1980, unless otherwise noted.

§ 329.1 Purpose.

This part provides policy guidance concerning the use of priorities and allocation authority under title I of the Defense Production Act of 1950, as